

SERVED: October 30, 1992

NTSB Order No. EA-3705

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 20th day of October, 1992

_____)	
THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12012
v.)	
)	
ROBERT LOUIS CONRAD,)	
)	
Respondent.)	
_____)	

ORDER DISMISSING APPEAL

Respondent moves to have his appeal brief accepted out of time. The Administrator urges us to reject the respondent's appeal brief because he has not shown good cause for his failure to meet the filing deadline set forth in Section 821.48(a) of the Board's Rules of Practice.¹ We will deny the respondent's

¹Section 821.48(a) provides as follows:

"§ 821.48(a) Briefs and oral argument.

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief."

motion.

The record establishes that respondent filed a timely notice of appeal from the oral initial decision the law judge rendered on July 1, 1992.² Respondent did not, however, perfect his appeal by filing an appeal brief within 50 days after that date, that is, by August 20. The only explanation respondent has offered for that failure is that he miscalculated the due date.³

However, as the Administrator points out in his opposition to the motion, the Board has consistently rejected such miscalculations as a basis for finding good cause for accepting a late brief.⁴ See, e.g., Administrator v. Gulf Flite Center, NTSB Order EA-3689 (served September 30, 1992), Administrator v. Perry, NTSB Order EA-2972 (1989), and Administrator v. Royal American Airways, Inc., 5 NTSB 1089 (1986), reconsideration denied, 5 NTSB 1090 (1986). Consequently, denial of respondent's motion and dismissal of his appeal are required by Board precedent. See Administrator v. Hooper, NTSB Order No. EA-2781 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's motion to accept brief out of time is denied, and
2. The respondent's appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

²The law judge affirmed, in part, an order of the Administrator which sought to suspend the respondent's private pilot certificate for 90 days for his alleged violations of sections 91.155(d)(1) and 91.13(a) of the Federal Aviation Regulations. Based on his conclusion that a violation of section 91.13(a) had not been shown, the law judge modified the Administrator's order to provide for a 45 day suspension. The Administrator did not appeal the decision.

³Respondent's motion and his late appeal brief were filed on August 27.

⁴Neither the nature of the issues a party seeks to raise on appeal, nor the absence of prejudice to the other party are relevant factors in our assessment of whether good cause exists to excuse a procedural default.